IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1123 of 1980

with

CRIMINAL APPEAL No 1338 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHRI KRISHNA OIL INDUSTRIES

Appearance:

1. Criminal Appeal No. 1123 of 1980

MR UA TRIVEDI ADDL. PUBLIC PROSECUTOR for Petitioner

MR DD VYAS for Respondent No. 1

MR KR RAVAL for Respondent No. 3, 4

2. Criminal AppealNo 1338 of 1980

MR SK JHAVERI for Petitioner

MR DD VYAS for Respondent No. 1

DELETED for Respondent No. 2

MR KR RAVAL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH
Date of decision: 11/02/2000

ORAL JUDGEMENT

Both these appeals respectively moved by the State of Gujarat and the Chotila Agricultural Produce Market Committee alongwith its Chairman Shri V.V.Khachar arise from the impugned judgment and order of acquittal dated 10th July, 1980 rendered by the learned Judicial Magistrate,First Class, Chotila in Criminal Case No. 157 of 1980. Short facts of the complaint filed by the complainant Mr. Khachar on behalf of the aforesaid Market Committee may briefly be reproduced from the impugned judgment:

The aforesaid Committee was legally constituted under the relevant provisions of the Gujarat Agricultural Markets Act, 1963 ("the Act" for short). Whole area of the Chotila Taluka was declared to be the market area and the agricultural products like wheat, bajra, jawar, cotton (Ginned and unginned) and ground nut (shelled and unshelled) were declared to be regulated under the provisions of the Act in the said market area. It was alleged that the accused carried on the business in the said market area without obtaining any licence and without paying the licence fees for the period 1978-79 and thereby the accused persons contravened the provisions of section 36 of the Act and Rule 52 of the Gujarat Agricultural Produce Markets Rules, 1965 ("the Rules" for short) which offence is essentially punishable with fine. It has further been alleged that the accused operated in respect of the regulated goods without bringing them first in the market area and thereby contravened the provisions of rule 54 of the Rules. Besides, the accused persons did not submit the accounts and periodical returns in prescribed form and thereby committed breach of the conditions of the licence. The accused pleaded not guilty to the aforesaid charges levelled against him in the complaint and opted for being tried. Upon trial, the learned Magistrate came to the conclusion that the complainant has failed to establish the complainant's authority in respect of filing the complaint. It was contended on behalf of the accused that the complainant was not legally and validly appointed by the Market Committee to take any action against the accused persons since the Market Committee itself was not in existence on the relevant date and

since the whole committee was already dissolved on account of election of the new committee. As against that, it was contended that since the elections of the new committee were in challenge before the Court, it could not be said that the old committee stood dissolved. Upon consideration of the relevant provisions of the Act (section 6, (3A) and 11(3)) of the Act, the learned Magistrate found both as a matter of fact as well as as a matter of law that the complainant did not have required authority to file the complaint. He,therefore, rendered the acquittal as aforesaid. The appellants are before this Court against the said acquittal with the leave of this Court.

The matter has been heard. Although prima facie it appeared that by virtue of Exh. 20, the complainant was authorized to file the complaint on account of breach of section 36 alleged to have been committed by the accused persons, there was no material worth the name to show that the complainant was authorized to file the complaint in respect of the alleged breach of rule 52, 54 and 58 of the rules. Exh. 20 is totally silent about the filing of the complaint in respect of violation of the said rules.

Now, in so far as the breach of section 36 of the Act is concerned, it would be important to note that Exh.20 is kept with the resolution passed by the aforesaid committee. It is first recited that the accused moved an application for obtaining licence for the year 1978-79 but the application is not being granted. It is next recited that for the period 1979-80, there was no application for obtaining the licence by the accused persons but there was money order for payment of the licence fees for that period which was not accepted. Now, pausing for a moment here, it is not shown whether the accused persons were intimated well in time with regard to the application for issuance of licence having not been granted in so far as 1978-79 is concerned and the licence fees for the next year being not accepted. It has finally been recited that as the accused persons have been trading without licence, criminal case is to be filed against the accused persons and, therefore, the Chairman Mr. V.V.Khachar is being authorized to file such case. On going through the whole of the material placed before the trial Court, it could not be said whether in fact, the accused persons knew about they having not been granted the licence for the relevant period and whether in fact they traded in the market area without licence. Thus, the very basis of the charges is lacking on the face of the proceedings which the accused

faced in so far as the violation of section 36 of the Act is concerned. Even the resolution does not speak about the accused persons having been intimated about the first two parts of the resolution itself before taking any criminal action in that respect. In that view of the matter, on facts, the acquittal would stand and it would be academic to go into the position of law as appeared from the decision in the case of State of Gujarat versus Harjivandas Dalichand reported in 6 GLR pg. 877 and the subsequent decision of the Apex court in case of Jan Mohammad Noor Mohamad Baghan versus The State of Gujarat and another, reported in AIR 1966 SC 385.

Having gone through the facts and circumstances of the case, both these appeals donot deserve acceptance after passage of nearly twenty years.

Both the appeals are, therefore, dismissed.

11.2.2000. (M.S.Parikh,J.)

Vyas